

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LUC CONSTANT CLAES,	)	CASE NO.	C05-0418-MJP-MAT
	)		(CR04-244-MJP)
Petitioner,	)		
	)		
v.	)		
	)	REPORT & RECOMMENDATION	
UNITED STATES OF AMERICA,	)		
	)		
Respondent.	)		

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Petitioner is a federal prisoner who was sentenced on October 6, 2004 to 18 months' imprisonment, after pleading guilty to one count of possession of the drug MDMA ("Ecstasy") with intent to distribute. (Dkt. #31 in Case No. CR04-244P). Petitioner has filed *pro se* motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. (Dkt. #1 in Case No. C05-418P). The motion was referred to the undersigned United States Magistrate Judge on March 16, 2004. (Dkt. #5).

A review of the docket sheet reveals that petitioner's direct appeal of his conviction is still pending before the Ninth Circuit Court of Appeals. (Dkt. #40 in Case No. CR04-244P). In fact, one week ago, this court granted petitioner's motion for appointment of counsel in his appeal. (Dkt. #47). Therefore, petitioner's § 2255 motion is premature. *See United States v. Deeb*, 944 F.2d 545, 548 (9<sup>th</sup> Cir. 1991) (holding that district courts should not entertain collateral attacks while a direct appeal is pending). Accordingly, I recommend that petitioner's § 2255 motion be

01 dismissed without prejudice. A proposed Order accompanies this Report and Recommendation.

02 DATED this 17th day of March, 2005.

03 s/ Mary Alice Theiler  
04 United States Magistrate Judge